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09/385,489	08/30/1999	THOMAS J. SULLIVAN	0110754/629	9228
24573	7590	09/26/2005	EXAMINER	
BELL, BOYD & LLOYD, LLC PO BOX 1135 CHICAGO, IL 60690-1135			LAстра, DANIEL	
			ART UNIT	PAPER NUMBER
			3622	
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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/385,489

Applicant(s)

SULLIVAN ET AL.

Examiner

DANIEL LASTRA

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-32,37-83 and 88-94 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32,37-83 and 88-94 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 07/07/2005.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. Claims 1-32, 37-83 and 88-94 have been examined. Application 09/385,489 has a filing date 08/30/1999.

#### ***Response to Amendment***

2. In response to Non Final Rejection filed 02/07/2005, the Applicant filed an Amendment on 07/07/2005, which amended claims 1, 23, 30, 37, 47, 68, 74, 77, 88, 89, 90 and cancel claims 33-36, 84-87. Applicant also filed an Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received as part of the affidavit on 07/07/2005.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-32, 37-83 and 88-94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (US 5,832,458) in view of Schultz (US 5,056,019).

As per claims 1, 47, 68, 74, 88 and 89, Jones teaches:

A method for an independent system operator to administer a trade promotion for a product involving a manufacturer and a retailer having at least one store with an in-store POS system, said method comprising the steps of the independent system operator:

*before a start of the trade promotion by the retailer, capturing terms of the trade promotion at least including promoted product identification (see Jones column 4, lines*

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40-67; column 11, lines 20-67) *at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion* (see Jones column 12, lines 1-11);

*before the start of the trade promotion by the retailer*, storing the captured terms of the trade promotion in an independent system operator database (see Jones column 4, lines 40-67; column 11, lines 20-67 – column 12, lines 1-40);

*after the start of the trade promotion by the retailer*, collecting from the retailer product POS data from, at least one in-store POS system of the retailer (see Jones column 12, lines 11-40);

filtering the product POS data using the promoted product identification stored in the independent system operator database to obtain promoted product POS data (see Jones column 12, lines 10-40);

Jones does not expressly mention “promoted product identification and predetermined payment value”, but in lines 14-40 of column 12 Jones teaches that by crafting the promotion contract around performance goals evidenced by incremental sales volume increases, and having recourse to a valid third party audit of the performance achieved, both retailer and manufacturer have a clear and current factual record to use in resolving payment disputes. An audit, according to Jones, materially reduces the current cost for both retailers and manufacturers to track, collate, and transmit data on performance. As a result, a prompt and accurate settlement between the parties materially reduces the cost of resolving the disputes fostered by the current

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process. Therefore, it would inherent to track the performance that would help manufacturers determine how much money they owed to the retailers, they would have to know the products that are in promotion and the payment value of said product because these items are essential to make such determination.

Jones teaches processing the promoted product POS data in accordance with at least one of the stored (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion to determine an amount of money the manufacturer owes to the retailer for the trade promotion (see Jones column 4, lines 41-67; column 12, lines 10-40) but Jones fails to teach facilitating the manufacturer's payment of the amount of money owed to the retailer for the trade promotion or that the independent system operator performs this settlement. However, Schultz teaches a central management firm (i.e. independent system operator) which audits and tracks all POS data obtained from retail stores to settle all rewards promotions between retailers and manufacturers. Schultz uses the purchase records obtained from the POS data to prepare reports that are sent to manufacturers and retailers (see Schultz column 8, lines 7-25). Schultz uses the redemption records to determine the redemption amount for reimbursing retailers and uses the purchase record to bills the manufacturers for those rewards earned and paid to consumers (see Schultz column 9, lines 5-12). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Schultz's central management firm (i.e. independent

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system operator) would store the Jones manufacturers' promotions in said firm central database (see Jones column 12, lines 1-11; see Schultz column 6, lines 13-20) and would audit and track all POS transactions from participating retailers to empirically determine what is the established (normal) sales volume for a particular product and independently documents any incremental sales volume increase to support the promotion settlement process (see Jones column 12, lines 12-25). Schultz would use said audit to create a report that would be sent to manufacturers and retailers (see Jones column 12, lines 20-25; Schultz column 8, lines 12-16) and would also take care of the settlement process by reimbursing retailers (see Schultz column 10, lines 35-45) and invoicing manufacturers (see Schultz column 9, lines 5-15). The Jones' system would be motivated to allow the independent system operator (i.e. audit system processor; see Jones column 12, lines 12-25; "central management firm" see Schultz column 9, lines 7-12) to perform all the settlement between manufacturers and retailers (see Schultz column 9, lines 1-15; column 10, lines 35-44) in order to make said system more fraud proof because said manufacturers would not have to worry that said retailers would deduct more money from checks paid by said retailers to said manufacturers and said retailers would not have to worry that said manufacturers would not reimburse said retailers for said promotion as said independent system operator would take care of all the invoicing and reimbursing between said parties.

As per claim 2, Jones teaches:

The method of Claim 1, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the terms of the

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trade promotion stored in the, independent system operator database to independently verify the terms of the trade promotion (see Jones column 11, lines 20-67 – column 12, lines 1-40).

As per claim 3, Jones teaches:

The method of Claim 1, which further includes the steps of the independent system operator: enabling the retailer to change the terms of the trade promotion prior to the start of the trade promotion, capturing the changed terms of the trade promotion and storing the captured changed terms of the trade promotion in the independent system operator database (see Jones column 11, lines 20-67 – column 12, lines 1-40).

As per claim 4, Jones teaches:

The method of Claim 3, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the stored terms of the trade promotion stored in the independent, system operator database to independently verify the terms of the trade promotion and to determine if the retailer changed the terms of the trade promotion (see column 11, lines 20-67 – column 12, lines 1-40).

As per claim 5, Jones teaches:

The method of Claim 1, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the processed promoted product POS data to determine the number of promoted products sold during the trade promotion (see Jones column 12, lines 10-40).

As per claim 6, Jones teaches:

The method of Claim 5, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the processed promoted product POS data to determine the amount of money the manufacturer owes to the retailer for the trade promotion (see Jones column 12, lines 10-40).

As per claim 7, Jones teaches:

The method of Claim 6, wherein the retailer and manufacturer use an internet to access the stored terms of the trade promotion in the independent system operator database, the number of promoted products sold during the trade promotion and the amount of money the manufacturer owes to the retailer for the trade promotion (see Jones column 6, lines 53-67).

As per claim 8, Jones teaches:

The method of Claim 1, wherein the step of storing the captured terms of the trade promotion includes storing the terms of the trade promotion in at least one predefined table in the independent system operator database (see Jones column 10, lines 58-63).

As per claim 9, Jones teaches:

The method of Claim 8, wherein the step of storing the captured terms of the trade promotion includes creating a UPC lists for the promoted products (see Jones column 5, lines 52-64).

As per claim 10, Jones teaches:



The method of Claim 9, wherein the step of storing the captured terms of the trade promotion includes generating a complete UPC code list of all of the UPC codes offered by the manufacturer (see Jones column 10, lines 19-30).

As per claim 11, Jones teaches:

The method of Claim 10, wherein the step of storing the captured terms of the trade promotion includes selecting additional products being promoted from the complete UPC code list (see Jones columns 11 and 12).

As per claim 12, Jones teaches:

The method of Claim 1, wherein the retailer has a plurality of stores with in-store POS systems and the step of collecting the product POS data includes collecting product POS data from the plurality of stores and consolidating all of the collected product POS data (see Jones column 6, lines 11-67).

As per claim 13, Jones teaches:

The method of Claim 12, wherein the step of filtering the product POS data includes the step of generating a table of UPC codes for products active in the trade promotion (see Jones column 8, lines 43-67).

As per claim 14, Jones teaches:

The method of Claim 12, wherein the step of filtering the product POS data includes the step of comparing the product POS data to the table of UPC codes to obtain the promoted product POS data (see Jones column 6, lines 27-52).

As per claim 15, Jones teaches:

The method of Claim 1, which further includes the step of the independent system operator verifying that the promoted product POS data is within acceptable tolerances (see Jones column 5, lines 51-64).

As per claim 16, Jones teaches:

The method of Claim 15, which includes the step of the independent system operator comparing the promoted product POS data for a period after the beginning of the trade promotion with product POS data for the same product for a period prior to the beginning of the trade promotion (see Jones column 12, lines 10-40).

As per claim 17, Jones teaches:

The method of Claim 1, wherein processing the promoted product POS data in accordance with the stored terms of, the trade promotion in the independent system operator database includes creating at least one, settlement table in the independent system operator database which includes the number of promoted products sold by the retailer during the trade promotion, discounts given to consumers on the promoted products during the trade promotion, and the amount of money the manufacturer owes to the retailer for the trade promotion (see Jones column 12, lines 10-40).

As per claim 18, Jones teaches:

The method of claim 1, but fails to teach wherein the step of facilitating the manufacturer's payment to the retailer includes paying the retailer using an electronic fund transfer. However, Official Notice is taken that it is old and well known in the business art to pay invoices using an electronic fund transfer. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was

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made, to know that Jones would use the Schultz's independent system operator to settle all transactions between retailers and manufacturers by reimbursing retailers using an electronic fund transfer. Jones would be motivated to include in his system the settlement of transactions between parties using electronic fund transfer in order to expedite said settlement and in order to save time and money in comparison of performing said settlement by mailing invoices and checks.

As per claim 19, Jones teaches:

The method of Claim 1, but fails to teach wherein the step of facilitating the manufacturer's payment to the retailer includes the independent system operator: sending an invoice to the manufacturer for payment, collecting the money the manufacturer owes to the retailer and paying the retailer the amount of money owed to the retailer. However, the same argument made in claim 1 is made in claim 19.

As per claim 20, Jones teaches:

The method of Claim 1, but fails to teach wherein the step of facilitating the manufacturer's payment to the retailer includes the independent system operator sending notices to the retailer and the manufacturer of the amount of money owed by the manufacturer to the retailer, the retailer deducting the amount of money from a manufacturer invoice and identifying the manufacturer invoice number and the deduction to the manufacturer. However, the same argument made in claim 1 is made in claim 20.

As per claim 21, Jones teaches:

The method of Claim 1, which further includes the step of the independent system operator consolidating all of the promoted product POS data for a plurality of trade promotions of products from the manufacturer (see Jones columns 11 and 12).

As per claim 22, Jones teaches:

The method of Claim 21, which further includes the step of the independent system operator processing the consolidated promoted product POS data for a plurality of retailers for the manufacturer (see Jones column 6, lines 27-52).

As per claim 23, Jones teaches:

A system for enabling an independent system operator to administer a trade promotion for a promoted product involving a manufacturer and a retailer having at least one store with an in-store POS system, said system comprising:

means for the independent system operator to capture *and store before a start of the trade promotion by the retailer* the terms of the trade promotion for the promoted product at least including promoted product identification (see Jones column 4, lines 40-67 – column 11, lines 20-67) *at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion* (see Jones column 12, lines 1-11);

means for the independent system operator to collect from the retailer product POS data from at least one in-store POS system of the retailer (see Jones column 12, lines 11-40);

*after the start of the trade promotion by the retailer* means for the independent system operator to filter the product POS data using the promoted product identification to obtain promoted product POS data for the promoted product (see Jones column 12, lines 10-40);

Jones does not expressly mention “promoted product identification and predetermined payment value”. However, the same argument made regarding this limitation in claim 1 is also made in claim 23.

means for the independent system operator to determine the amount of money the manufacturer owes to the retailer based on the promoted product POS data and at least one of the stored (a) predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion (see Jones column 4, lines 41-67; column 12, lines 10-40) but fails to teach and means for the independent system operator to pay the retailer the amount of money determined by the independent system operator to be owed to the retailer by the manufacturer for the trade promotion. However, the same argument made in claim 1 regarding this limitation is made in claim 23.

As per claim 24, Jones teaches:

The system of claim 23, wherein the retailer has a plurality of stores with in-store POS systems and the collection means collects product POS data from the plurality of retailer stores and consolidates the product POS data into a consolidated file for transfer to the filtering means (see Jones column 12, lines 10-40).

As per claim 25, Jones teaches:

The system of Claim 24, wherein the filtering means includes means for the independent system operator to compare the product POS data to a list of UPC for the trade promotion to obtain the promoted product POS data (see Jones column 8, lines 40-67).

As per claim 26, Jones teaches:

The system of Claim 24, wherein the filtering means includes means for comparing the product POS data to a list of UPC's for the promotion to obtain the promoted product POS data (see Jones column 12, lines 10-40).

As per claim 27, Jones teaches:

The system of Claim 23, which further includes means for the independent system operator to report the promoted product POS data to the retailer and the manufacturer (see Jones column 12, lines 10-40).

As per claim 28, Jones teaches:

The system of Claim 27, wherein the reporting means reports the promoted product POS data via the Internet (see Jones column 6, lines 52-67).

As per claim 29, Jones teaches:

The system of Claim 23, wherein the determining means consolidates the promoted product POS data for a plurality of products for the manufacturer (see Jones column 12, lines 10-40).

As per claim 30, Jones teaches:

A method for an independent system operator to administer a plurality of trade promotions for products involving a manufacturer and a retailer having at least one store with an in-store POS system, said method comprising the steps of the independent system operator:

*before a start of the trade promotions by the retailer, storing the terms of the trade promotions at least including promoted product identification and at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion* in an independent system operator database (see Jones column 4, lines 40-67; column 11, lines 20-67);

*before a start of the trade promotions by the retailer, providing the retailer and manufacturer access to the independent system operator database to independently verify the terms of the trade promotions* (see Jones column 12, lines 10-40);

*after the start of the trade promotions by the retailer, collecting from the retailer the product POS data during the trade promotions from at least one in store POS system of the retailer* (see Jones column 12, lines 11-40);

filtering the product POS database on the stored promoted product identification to obtain promoted product POS data (see Jones column 12, lines 11-40);

storing the promoted product POS data in the independent system operator database (see Jones column 12, lines 10-40);

Jones does not expressly mention "promoted product identification and predetermined payment value", but in lines 30-40 of column 12 Jones teaches that by crafting the promotion contract around performance goals evidenced by incremental sales volume increases, and having recourse to a valid third party audit of the performance achieved, both retailer and manufacturer have a clear and current factual record to use in resolving payment disputes. An audit, according to Jones, materially reduces the current cost for both retailers and manufacturers to track, collate, and transmit data on performance. As a result, a prompt and accurate settlement between the parties materially reduces the cost of resolving the disputes fostered by the current process. Therefore, it would be inherent that to track the performance that would help manufacturers determine how much money they owed to the retailers, they would have to know the products that are in promotion and the predetermined payment value because these items are essential to make such determination.

determining an amount of money the manufacturer owes to the retailer based on the promoted product POS data and *at least one of the stored (a) predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion* stored in the independent system operator database (see Jones column 12, lines 1-25);

storing the amount of money the manufacturer owes the retailer in the independent system operator database (see Jones column 12-25);



*after a start of the trade promotions by the retailer* providing the retailer and manufacturer access to the independent system operator database during the conduct of the trade promotions to determine *at least a portion of* the amount of money the manufacturer owes the retailer for the trade promotion (see Jones column 12, lines 10-25) but fails to teach facilitating payment to the retailer of the amount of money determined to be owed to the retailer by the manufacturer. However, the same argument made in claim 1 regarding this limitation is made in claim 30.

As per claim 31, Jones teaches:

The method of Claim 30, which further includes the step of the independent system operator consolidating all of the promoted product POS data for a plurality of trade promotions of products from the manufacturer (see Jones columns 11-12).

As per claim 32, Jones teaches:

The method of Claim 31, which further includes the step of the independent system operator processing the consolidated promoted product POS data for a plurality of retailers for the manufacturer (see Jones column 6, lines 27-52).

As per claim 37, Jones teaches:

A system for administering a trade promotion for a promoted product between a retailer and a manufacturer, said system comprising:

an independent system having a processor and an electronic database accessible by the processor which are adapted to, *before a start of the trade promotion by the retailer* capture and store the terms of the trade promotion for the promoted product at least including promoted product identification (see Jones column 4, lines 40-

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67; column 11, lines 20-67) *and at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion after the start of the trade promotion by the retailer* (see Jones column 12, lines 10-25);

to collect from the retailer promoted product POS data for the promoted product of the trade promotion from the retailer (see Jones column 12, lines 11-40);

to process the collected promoted product POS data in accordance with *at least one of the stored (a) predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion* in the electronic database (see Jones column 4, lines 40-67; column 12, lines 10-40);

to determine an amount of money the manufacturer owes to the retailer for the trade promotion (see Jones column 12, lines 12-30); and

a retailer system in communication with the independent system, having a processor adapted to *after the start of the trade promotion by the retailer*, collect promoted product POS data for the promoted product from a plurality of retailer stores, to consolidate the promoted product POS data, and to transfer the promoted product POS data for the trade promotion to the independent system (see Jones column 12, lines 10-40); and

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a manufacturer system in communication with the independent system (see Jones column 11, lines 20-67 – column 12, lines 1-40).

Jones does not expressly mention “promoted product identification and predetermined payment value”, but in lines 30-40 of column 12 Jones teaches that by crafting the promotion contract around performance goals evidenced by incremental sales volume increases, and having recourse to a valid third party audit of the performance achieved, both retailer and manufacturer have a clear and current factual record to use in resolving payment disputes. An audit, according to Jones, materially reduces the current cost for both retailers and manufacturers to track, collate, and transmit data on performance. As a result, a prompt and accurate settlement between the parties materially reduces the cost of resolving the disputes fostered by the current process. Therefore, it would be inherent that to track the performance that would help manufacturers determine how much money they owed to the retailers, they would have to know the products that are in promotion and the predetermined payment value because these items are essential to make such determination. Jones does not teach that the independent system operator is doing the settlement. However, the same argument made in claim 1 regarding this limitation is made in claim 37.

As per claim 38, Jones teaches:

The system of Claim 37, wherein the independent system is adapted provide the retailer system and the manufacturer system access to the independent system electronic database to independently verify the stored terms of the trade promotion (see Jones column 12, lines 1-40)

to determine the number of promoted products sold during the trade promotion and to determine the amount of money the manufacturer owes to the retailer for the trade promotion (see Jones column 12, lines 1-40).

As per claim 39, Jones teaches:

The system of Claim 38, wherein the independent system provides the manufacturer system and the retailer system access to the independent system through the internet (see Jones column 6, lines 53-67).

As per claim 40, Jones teaches:

The system of Claim 37, wherein the independent system is adapted to generate a table of UPC codes that are active in the trade promotion and to transfer said table of UPC codes to the retailer system (see Jones column 5, lines 51-64 and column 12, lines 1-40).

As per claim 41, Jones teaches:

The system of Claim 40, wherein the retailer system is adapted to collect product POS data for all of the products the retailer sells and to use the table of UPC codes to filter the product POS data to obtain promoted product POS data for the promoted product (see Jones column 12, lines 1-40).

As per claim 42, Jones teaches:

The system of Claim 37, wherein the independent system is adapted to verify that the promoted product POS data for the promoted product is within acceptable tolerances for the promoted product (see Jones column 12, lines 1-40).

As per claim 43, Jones teaches:

The system of Claim 37, wherein the independent system is adapted to consolidate all of the promoted product POS data for a plurality of promoted products for the manufacturer (see Jones columns 11-12).

As per claim 44, Jones teaches:

The system of Claim 43, wherein the independent system is adapted to process the consolidated promoted product POS data for a plurality of retailers for the manufacturer (see Jones column 6, lines 26-67).

As per claim 45, Jones teaches:

The method of Claim 1, wherein the step of collecting product POS data from at least one in-store POS system of the retailer includes receiving product POS data from a retailer network after the retailer network receives the product POS data from the in-store POS system of at least one retailer store (see Jones column 12, lines 1-40).

As per claim 46, Jones teaches:

The method of Claim 1, wherein the retailer has a plurality of retailer stores with in-store POS system, and wherein the step of collecting product POS data from at least one in-store POS system of the retailer includes receiving product POS data from a retailer network after the retailer network receives the product POS data from the in-store POS systems in said plurality of retailer stores (see Jones column 6, lines 27-53).

As per claim 48, Jones teaches:

The method of Claim 47, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the terms of the

trade promotion stored in the independent system operator database to independently verify the terms of the trade promotion (see Jones columns 11-12).

As per claim 49, Jones teaches:

The method of Claim 47, which further includes the step of the independent system operator: enabling the retailer to change the stored terms of the promotion prior to the start of the trade, promotion, capturing the changed terms of the trade promotion and storing the changed terms of the trade promotion in the independent system operator database (see Jones columns 11 and 12).

As per claim 50, Jones teaches:

The method of Claim 49, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the stored terms of the trade promotion stored in the independent system operator database to independently verify the terms of the trade promotion and to determine if the retailer changed the terms of the trade promotion (see Jones columns 11 and 12).

As per claim 51, Jones teaches:

The method of Claim 47, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the processed promoted product POS data to determine the number of the promoted products sold during the trade promotion (see Jones column 12, lines 1-40).

As per claim 52, Jones teaches:

The method of Claim 51, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the processed

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promoted product POS data to determine the amount of money the manufacturer owes to the retailer for the trade promotion (see Jones column 12, lines 12-30).

As per claim 53, Jones teaches:

The method of Claim 52, wherein the retailer and manufacturer use an internet to access the stored terms of the trade promotion in the independent system operator database, the number of promoted products sold during the trade promotion and the amount of money the manufacturer owes to the retailer for the trade promotion (see Jones column 12, lines 1-40 and column 6, lines 53-67).

As per claim 54, Jones teaches:

The method of Claim 47, wherein the step of storing the captured terms of the trade promotion includes storing the terms of the trade promotion in at least one predefined table in the independent system operator database (see Jones column 12, lines 1-40).

As per claim 55, Jones teaches:

The method of Claim 54, wherein the step of storing the captured terms of the trade promotion includes creating a UPC lists for the promoted products (see Jones column 5, lines 50-64).

As per claim 56, Jones teaches:

The method of Claim 55, wherein the step of storing the captured terms of the trade promotion includes generating a complete UPC code list of all of the UPC codes offered by the manufacturer (see Jones column 6, lines 26-52 and column 12, lines 1-40).

As per claim 57, Jones teaches:

The method of Claim 56, wherein the step of storing the captured terms of the trade promotion includes selecting additional products being promoted from the complete UPC code list (see Jones column 6, lines 26-52 and column 12, lines 1-40).

As per claim 58, Jones teaches:

The method of Claim 47, wherein the retailer has a plurality of stores with in-store POS systems and the step of receiving the promoted product POS data includes receiving consolidated promoted product POS data from the plurality of stores (see Jones column 12, lines 1-40).

As per claim 59, Jones teaches:

The method of Claim 58, wherein the step of receiving the promoted product POS data includes receiving consolidated promoted product POS data from a retailer network after the retailer network receives the promoted product POS data from the plurality of stores (see Jones column 12, lines 1-40).

As per claim 60, Jones teaches:

The method of Claim 47, which further includes the step of the independent system operator verifying that the promoted product POS data is within acceptable tolerances (see Jones column 12, lines 1-40).

As per claim 61, Jones teaches:

The method of Claim 60, which includes the step of the independent system operator comparing the promoted product POS data for a period after the beginning of



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the trade promotion with product POS data for the promoted product for a period prior to the beginning of the trade promotion (see Jones column 12, lines 1-40).

As per claim 62, Jones teaches:

The method of Claim 60, wherein processing the promoted product POS data in accordance with the terms of the trade promotion includes creating at least one settlement table in the independent system operator database which includes the number of promoted products sold by the retailer during the trade promotion, discounts given to consumers on the promoted products during the trade promotion, and the amount of money the manufacturer owes to the retailer for the trade promotion (see Jones column 5, lines 52-64 and column 12, lines 1-40).

As per claim 63, Jones teaches:

The method of Claim 47, wherein the step of facilitating the manufacturer's payment to the retailer includes the independent system operator paying the retailer using an electronic funds transfer. The same rejection applied to claim 18 is applied to claim 63.

As per claim 64, Jones teaches:

The method of Claim 47, but fails to teach wherein the step of facilitating the manufacturer's payment to the retailer includes the independent system operator: sending an invoice to the manufacturer for payment, collecting the money the manufacturer owes to the retailer and paying the retailer the amount of money owed to the retailer. However, the same argument made in claim 1 regarding this limitation is made in claim 64.

As per claim 65, Jones teaches:

The method of Claim 47, but fails to teach wherein the step of facilitating the manufacturer's payment to the retailer includes the independent system operator sending notices to the retailer and the manufacturer of the amount of money owed by the manufacturer to the retailer, the retailer deducting the amount of money from a manufacturer invoice and identifying the manufacturer invoice number and the deduction to the manufacturer. However, the same argument made in claim 1 regarding this limitation is made in claim 65.

As per claim 66, Jones teaches:

The method of Claim 47, which further includes the step of the independent system operator consolidating all of the promoted product POS data for a plurality of trade promotions of products from the manufacturer (see Jones columns 11-12).

As per claim 67, Jones teaches:

The method of Claim 66, which further includes the step of the independent system operator processing the consolidated promoted product POS data for a plurality of retailers for the manufacturer (see Jones columns 11-12).

As per claim 69, Jones teaches:

The system of Claim 68, wherein the retailer has a plurality of stores with in-store POS systems and a retailer network which collects product POS data from the plurality of in-store POS systems in the plurality of stores and filters the consolidated product POS data to obtain consolidated promoted product POS data, and wherein the

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collecting means is adapted to receive the consolidated promoted product POS data from the retailer network (see Jones column 12, lines 1-40).

As per claim 70, Jones teaches:

The system of Claim 68, where the determining means includes means for verifying that the promoted product POS data is within acceptable tolerances for the promoted product (see Jones column 12, lines 1-40).

As per claim 71, Jones teaches:

The system of Claim 68, which further includes means for the independent system operator to report the promoted product POS data to the retailer and the manufacturer (see Jones column 12, lines 1-40).

As per claim 72, Jones teaches:

The system of Claim 68, wherein the reporting means reports the promoted product POS data via an internet (see Jones column 6, lines 53-67).

As per claim 73, Jones teaches:

The system of Claim 68, wherein the determining means consolidates the promoted product POS data for a plurality of trade promotions, for the manufacturer and the paying means aggregates payments owed to the retailer by the manufacturer for said plurality of trade promotions (see Jones column 12, lines 1-40).

As per claim 75, Jones teaches:

The method of Claim 74, which further includes the step of the independent system operator consolidating all of the promoted product POS data for a plurality of trade promotions of products from the manufacturer (see Jones columns 11-12).

As per claim 76, Jones teaches:

The method of Claim 75, which further includes the step of the independent system operator processing the consolidated promoted product POS data for a plurality of retailers for the manufacturer (see Jones columns 11-12).

As per claim 77, Jones teaches:

A method for independent system operator to administer a trade promotion for a product involving a manufacturer and a retailer having at least one store with an in-store POS system, said method comprising the steps the independent system operator:

*before a start of the trade promotion by the retailer, capturing terms of the trade promotion including an identification of the retailer, an identification of the manufacturer, a trade promotion type, a UPC Code for the promoted product (see Jones column 5, lines 51-64 and column 12, lines 1-40) at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion (see Jones column 12, lines 10-30). Jones fails to teach and link codes for associated discounts if the trade promotion is an electronic discount trade promotion storing said captured terms of the trade promotion in an independent system operator database. However, Schultz teaches customers cards that enable the retailer/manufacturer to issue electronic discounts to said customers at the point of sale based upon said customer card linking to promotions" (see Schultz column 8, lines 39-41; column 4, lines 64-67). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the*

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application was made, to know that Jones would use Schultz cards to enable retailers/manufacturers to issue electronic discounts to consumers at the point of sale terminal. Jones would be motivated to include customers cards that are linked to promotions in his trade promotion system in view that said cards would identify the customers which said identification would be used to better target advertisements and promotions to said customers.

Jones does not expressly mention "payment value for the promoted product". However, the same argument made in claim 1 regarding this limitation is also made in claim 77.

*before the start of the trade promotion by the retailer, storing said captured terms of the trade promotion in an independent system operator database (see Jones column 12, lines 1-40);*

*after the start of the trade promotion by the retailer, receiving from the retailer promoted product POS data for said trade promotion from at least one in-store POS system of the retailer (see Jones column 12, lines 11-40).*

*processing the promoted product POS data in accordance with at least one of the stored (a) predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and the stored (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion in the independent system operator database to determine an amount of money the manufacturer owes to the retailer for the trade promotion (see Jones column 12, lines 11-40). However, Jones fails to teach that said independent*

system operator perform the settlement. However, the same argument made in claim 1 regarding this limitation is also made in claim 77.

As per claim 78, Jones teaches:

The method of Claim 77, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the terms of the trade promotion stored in the independent system operator database to independently verify the terms of the trade promotion (see Jones columns 11-12).

As per claim 79, Jones teaches:

The method of Claim 77, which further includes the step of the independent system operator: enabling the retailer to change at least one of the terms of the trade promotion prior to the start of the trade promotion, capturing the changed terms of the trade promotion and storing the captured changed terms of the trade promotion in the independent system operator database (see Jones column 12, lines 1-40).

As per claim 80, Jones teaches:

The method of Claim 79, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the stored terms of the trade promotion stored in the independent system operator database to independently verify the terms of the trade promotion and to determine if the retailer changed any of the terms of the trade promotion (see Jones columns 11-12).

As per claim 81, Jones teaches:

The method of Claim 77, which further includes the step of consolidating all of the promoted product POS data for a plurality of trade promotions of products from the manufacturer (see Jones column 11-12).

As per claim 82, Jones teaches:

The method of Claim 77, which further includes the step of processing the consolidated promoted product POS data for a plurality of retailers for the manufacturer (see Jones columns 11-12).

As per claim 83, Jones teaches:

The method of Claim 77, but does not expressly teach wherein the step of capturing terms of the trade promotion further includes capturing special payment terms. However, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that special payment terms would be another trade promotion offer by retailers, the same as offering price reduction or free goods and this feature would be added to Jones system. Jones would be motivated to add special payment terms to his trade promotion system in order to attract more business to said system, as customers would have more options to receive promotions.

As per claim 90, Jones teaches:

A method for an independent system operator to administer a trade promotion for a promoted product involving a manufacturer and a retailer having at least one store with an in-store POS system, said method comprising the steps of the independent system operator:

*before a start of the trade promotion by the retailer, capturing terms of the trade promotion for the promoted product at least including promoted product identification (see Jones column 11, lines 20-67 – column 12, lines 1-40) and at least one of (a) a predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion before the start of the trade promotion by the retailer (see Jones column 12, lines 10-30);*

*before the start of the trade promotion by the retailer, storing the captured terms of the trade promotion in an independent system operator database (see Jones column 11, lines 20-67 – column 12, lines 1-40);*

*before the start of the trade promotion by the retailer, enabling the retailer and the manufacturer to access the terms of the trade promotion stored in the independent system operator database to independently verify the terms of the trade promotion (see Jones column 12, lines 10-40);*

*before the start of the trade promotion by the retailer, enabling the retailer to change at least one of the stored terms of the promotion prior to the start of the trade promotion, capturing any changed terms of the trade promotion and storing any changed terms of the trade promotion in the independent system operator database (see Jones column 12, lines 10-40). For a trade promotion to be activated, there has to be an agreement between retailers and manufacturers and the moment that there is a*



changed in the terms of said trade promotion, said change would create a new promotion with new terms.

*before the start of the trade promotion by the retailer*, enabling the retailer and the manufacturer to access the stored terms of the trade promotion stored in the independent system operator database to independently verify the terms of the trade promotion and to determine if the retailer changed the terms of the trade promotion (see Jones column 11, lines 20-67 – column 12, lines 1-40);

*after the start of the trade promotion by the retailer*, receiving from the retailer promoted product POS data for the promoted product of the trade promotion from at least one in-store POS system of the retailer (see Jones column 12, lines 10-40);

processing the promoted product POS-data in accordance with *at least one of the store (a) predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion, and (b) predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion* in the independent system operator database (see Jones column 11, lines 20-67 – column 12, lines 1-40) to determine an amount of money the manufacturer owes to the retailer for the trade promotion (see Jones column 12, lines 12-20) but fails to teach and facilitating the manufacturer's payment of the amount of money owed to the retailer for the trade promotion. However, the same argument made in claim 1 regarding this limitation is also made in claim 90.

verifying that the promoted product POS data is within acceptable tolerances (see Jones column 12, lines 10-40);

enabling the retailer and the manufacturer to access the processed promoted product POS data to determine the amount of money the manufacturer owes to the retailer for the trade promotion (see Jones column 12, lines 10-40); and

Jones does not expressly mention "promoted product identification and predetermined payment value for said trade promotion". However, the same argument made in claim 1 regarding this limitation is made in claim 90.

As per claim 91, Jones teaches:

The method of Claim 90, which further includes the step of the independent system operator enabling the retailer and the manufacturer to access the processed promoted product POS data to determine the number of the promoted products sold during the trade promotion (see Jones column 12, lines 1-40).

As per claim 92, Jones teaches:

The method of Claim 90, wherein the retailer has a plurality of stores with in-store POS systems and the step of receiving the promoted product POS data includes receiving consolidated promoted product POS data from the plurality of stores (see Jones column 6, lines 27-52 and columns 11-12).

As per claim 93, Jones teaches:

The method of Claim 92, wherein the step of receiving the promoted product POS data includes receiving consolidated promoted product POS data from a retailer network after the retailer network receives the promoted product POS data from the plurality of stores (see Jones column 6, lines 27-52 and columns 11-12).

As per claim 94, Jones teaches:

The method of Claim 90, which includes the step of the independent system operator comparing the promoted product POS data for a period after the beginning of the trade promotion with product POS data for the promoted product for a period prior to the beginning of the trade promotion (see Jones column 12, lines 1-40).

***Response to Arguments***

4. Applicant's arguments filed 07/07/2005 have been fully considered but they are not persuasive. The Applicant argues on page 29 that Jones does not teach all the elements in the Independent claims because Jones does not teach the storing of "at least one of a predetermined payment value the manufacturer will owe the retailer of each promoted product sold by the retailer during the trade promotion and a predetermined payment value the manufacturer will owe the retailer for conducting the trade promotion. The Examiner answers that the Board of Appeal Decision on page 11 decided that sales volume of a promoted product relates to the amount of money owed by the manufacturer to the retailer for the promotion. Therefore, information of sale volume can be properly construed to be "predetermined payment value" since predetermined payment value relates to the amount of money owed by the manufacturer to the retailer for the promotion.

The Applicant argues on page 32 that Jones does not teach that before the start of the trade promotion by the retailer, at least one of predetermined payment value the manufacturer will owe the retailer for each promoted product sold by the retailer during the trade promotion is stored in the independent system database. The Examiner answers that the Board of Appeal decision on page 11 found that Jones teaches

"capturing the terms of the trade promotion at least including promoted product identification and payment term information in an independent system which operates independently from the retailer and manufacturer in storing the captured terms of the trade promotion in the electronic database of the independent system". Also, the Board mentioned in page 11 "we find that the term "payment term information" is any information but not all information relating to the amount of money owed by the manufacturer to the retailer for the promotion and related payment information". The Examiner answers that "predetermined payment value" is also considered "payment term information" and therefore, Jones teaches the previous limitation. The addition of the limitation of storing the payment values "before the start of the trade promotion" does not overcome the art because Jones teaches that to activate a trade promotion there has to be an agreement between parties and said agreement of the term of said promotion and said agreement has to occur before said promotion is activated.

The Applicant argues on page 34 that Jones only teaches providing the retailer and manufacturer a report after a trade promotion event and said report does not expressly teach providing access to a database and more specifically, providing access to a database to allow the determination of at least a portion of an amount of money owed to a retailer during the trade promotion. Also, the Applicant argues in page 35 that nowhere does Jones disclose providing the manufacturer and retailer access to the independent system operator database to access the terms of a trade promotion. The Examiner answers that the Board of Appeal decision on page 12 found "Thus, retaining the files for 52 weeks and providing reports of the files, Jones teaches a method of

enabling the retailer and the manufacturer to access the electronic database file to determine the stored terms of the trade promotion". Therefore, Jones teaches allowing manufacturers and retailers access to the independent system operator database to allow determination of amount of money owed (i.e. stored terms of the trade promotion and sales volume) to have a prompt and accurate settlements between the parties, similar to Applicant's claimed invention.

The Applicant argues on page 35 and 36 that Jones does not teach that before the start of the trade promotion by the retailer, the method enables the retailer to change at least one the stored terms of the promotion prior to the start of the trade promotion and also that Jones does not provide any support that at least the specified terms of the trade promotion are stored before the start of the trade promotion. The Examiner answers that the Board of Appeal found on page 12 "Thus, by retaining the files for 52 weeks and providing reports of the files, Jones teaches a method of enabling the retailer and the manufacturer to access the electronic database file to determine the stored terms of the trade promotion" and the Board of Appeal also mentioned on page 12 "Jones does teach capturing and storing terms of the trade promotion in an electronic database of the independent system". Therefore, Jones does provide support of storing trade promotion before the start of the trade promotion. The adding of the limitation "before the start of the trade promotion" does not overcome the art because Jones already teaches in column 12, lines 10-30 that trade promotion are agreements between retailers and manufacturers and, therefore, the involved parties have to agree on the terms of said promotion before the start of said promotion. Therefore, in Jones

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the terms of a promotion have to be stored in the independent database before the start of said promotion so that the Jones' system is able to track and audit the results of said promotion. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that if in the middle of a promotion, a retailer or a merchant wants to change the terms of said promotion, Jones would provide said retailer or merchant access to the promotion files to change the terms of said promotion, however, said change would create a new promotion with a corresponding new agreement.

The Applicant argues on page 36 that Willman was used improperly to add certain features missing in Jones. The Examiner answers that Applicant argument are moot based upon new ground of rejection.

The Applicant argues on page 43 that Sloan does not teach missing features in Jones. The Examiner answers that Applicant argument are moot based upon new ground of rejection.

The Applicant files a declaration under 37 C.F.R. § 1.132 with Exhibits A to G to indicate that the Applicant's claimed invention satisfied at least a 10 year old long-felt need that was not solved by others.

The Examiner answers that is true that there was a long-felt need to solve the problem of trade promotion and that was the reason that Jones filed an application for a patent on June 7, 1995 to solve said need. The difference between Jones and the Applicant's claimed invention is that Jones' independent system operator is not doing all the settlement between parties. However, the Examiner found a prior art (Schultz filed in

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1989) that teaches an independent system operator that stores manufacturers' promotions terms in said independent system operator database and compare said terms with monitor POS data from participating retailers to settle all transactions between said retailers and said manufacturers (see Schultz column 9, lines 5-10; column 10, lines 35-45; column 8, lines 7-25). The Jones' system would be motivated to allow the independent system operator (i.e. audit system processor; see Jones column 12, lines 12-25; "central management firm" see Schultz column 9, lines 7-12) to perform all the settlement between manufacturers and retailers (see Schultz column 9, lines 1-15; column 10, lines 35-44) in order to make said system more fraud proof and trustworthy because said manufacturers would not have to worry that said retailers would deduct more money from checks paid by said retailers to said manufacturers and said retailers would not have to worry that said manufacturers would not reimburse said retailers for said promotion as said independent system operator would take care of all the invoicing and reimbursing between said parties, as taught by Schultz.

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 571-272-6720. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ERIC W. STAMBER can be reached on 571-272-6724. The Examiner's Right fax number is 571-273-6720.

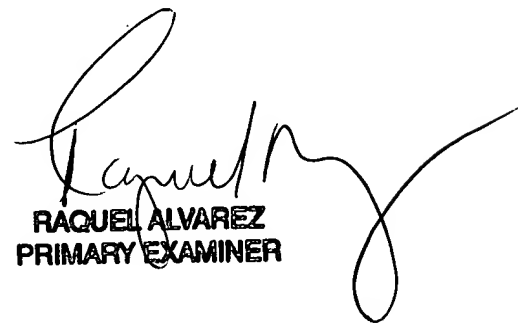
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Daniel Lastra

September 18, 2005



**RAQUEL ALVAREZ**  
**PRIMARY EXAMINER**